

California Marine Life Protection Act Initiative Blue Ribbon Task Force

MEMORANDUM

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**To: Mike Chrisman, Secretary
California Resources Agency**

**From: Phil Isenberg, Chair
MLPA Blue Ribbon Task Force**

Subject: Long-term funding for the Marine Life Protection Act

Date: December 21, 2005

You have directed our task force to produce four work products for you:

- Product one: *To oversee the development of a draft Master Plan Framework for the Department of Fish and Game to present to the Fish and Game Commission by May 2005.* Our draft Master Plan Framework was submitted to the department in April 2005 and adopted in a slightly revised form by the Fish and Game Commission in August 2005.
- Product two: *To prepare a comprehensive strategy for long-term funding of MLPA implementation by December 2005.* The attached report on long-term funding is our second work product and meets your deadline for submission by December 2005 (discussed in more detail below).
- Product three: *To oversee a regional project to develop a proposal for alternative networks of marine protected areas in an area along the central coast to present to the Fish and Game Commission by March 2006.* We are working hard on developing recommendations for networks of MPAs along the central coast of California and will submit our recommendation to the Department of Fish and Game by March 2006. The efforts of the MLPA Master Plan Science Advisory Team, the MLPA Central Coast Regional Stakeholder Group and the staffs of the Department of Fish and Game and of the MLPA Initiative have been impressive, intense and productive.
- Product four: *To develop recommendations for improved coordination with federal agencies involved in marine protected areas management by November 2006.* Our effort to recommend ways for state agencies and departments to cooperate with federal agencies in marine life protection is underway and will be submitted to you at the end of 2006. To date we have engaged the California Department of Fish and Game, California Department of Parks and Recreation, State Water Resources Control Board, National Marine Sanctuary Program and United

States Air Force. We have also begun identifying other relevant state and federal activities and responsible agencies.

To produce the attached long-term financing study, we retained Craig Brown (former director of finance under Governor Pete Wilson) and Tim Gage (former director of finance under Governor Gray Davis) as consultants to the MLPA Blue Ribbon Task Force. Their report identifies options for long-term funding of the Marine Life Protection Act.

The consultants have made five recommendations:

1. Within the priorities of the California Resources Agency, seek General Fund support for initial operating expenses of the project through the 2006-07 Governor's Budget.
2. Within an upcoming resources or infrastructure bond, seek an allocation to cover capital investments of the MLPA.
3. Seek passage of a broadly based, easily collectable and enforceable fee for MLPA activities that cannot be funded on a timely basis from the above sources. Although local governments and facility operators may have serious concerns, an occupancy tax on lodging along the coast is a reasonable candidate for consideration.
4. In conjunction with all of the above, seek federal and private sector support on a matching basis.
5. For long-term funding, convene a broadly based group of environmental stakeholders, the industry and appropriate scientists to explore the feasibility of the "Rigs to Reefs" concept as discussed in the report.

The MLPA Blue Ribbon Task Force accepted this report and conveys it to you for your consideration and action. We understand that each of these options will generate opposition from someone. However, the range of choices presented to you provides the Administration and the California State Legislature with options that provide reasonable funding of the statutory mandate of the MLPA.

We appreciate the efforts of the many stakeholders who have participated in this study of long-range funding by submitting ideas, suggestions and recommendations. The level of public participation in all aspects of the task force's work has been impressive. Stakeholders, of course, will continue to disagree about the details of MLPA implementation, including the options for long-time funding. However, that has not prevented them from working hard to make sure that all the products of the task force are informed by their best judgments.

The task force also notes that adequate funding for the Marine Life Protection Act is critical to successful implementation of this important policy and urges high priority for such funding. We anticipate that in early 2006 we will forward further suggestions about specific strategies to pursue for long-term funding of the MLPA.

In the spirit of this open and collaborative process, we are forwarding this report to you.

Enclosure
cc: Director L. Ryan Broddrick

Options for Funding the Activities of the Marine Life Protection Act Initiative

Prepared for

**The California MLPA Blue Ribbon
Task Force to the
California Resources Agency**

By

Craig Brown & Tim Gage

December 2005

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Introduction

The authors, at the request of the Marine Life Protection Act Blue Ribbon Task Force (MLPA BRTF), examined options for ongoing financial support of the state's Marine Life Protection Act (Chapter 1015, Statutes of 1999). Under this act, the state is expected to undertake a major study of the oceans along California's vast coast and to develop and implement a marine life protection program. Such a process will require a significant level of activity over several years as well as ongoing monitoring once the initial plans are completed and implemented.

Since activities related to the Marine Life Protection Act Initiative (MLPAI) are in their early stages it is not easy to arrive at an estimate of the funding required to implement the act over a reasonable period of time. For purposes of this report, the authors estimate that annual costs in the range of \$30 million to \$60 million will be required over the next several years.

The purpose of this report is to provide decision-makers with an array of choices that can provide ongoing funding for the completion of the MLPAI, and for necessary implementation, monitoring, and oversight of those recommendations.

Fundamental to our analysis is our belief that protection of the ocean is of benefit to the entire state and a significant portion of the costs of the MLPAI should be borne by the General Fund. We recognize, however, that practical difficulties of using the General Fund alone, and suggest a variety of additional revenue sources that may be appropriate as a part of an overall approach. In preparing this report the authors solicited ideas and suggestions from a wide variety of stakeholders involved in the MLPAI. We thank the numerous individuals and groups that provided us with suggestions for our consideration.

The authors appreciate the support of Dr. John Kirlin, Executive Director of the Marine Life Protection Act Initiative, and Mr. Phil Isenberg, Chair of the California MLPA Blue Ribbon Task Force to the California Resources Agency.

Overview

In exploring funding options for the Marine Life Protection Act Initiative (MLPAI) we begin with a threshold question. Do the beneficiaries of a successful MLPAI represent a broad spectrum of Californians so as to justify a General Fund program, or are the users and beneficiaries relatively narrow so as to limit justification for General Fund support? To state the second option another way, should the users/beneficiaries carry the full burden of the program's costs?

In our view that question is rather easily answered. Clearly, a successful MLPAI will benefit a very broad spectrum of Californians. The program will operate along the entire California coast, and will enhance a major recreational and economic resource. Therefore, the use of general-purpose, taxpayer-supported resources (the General Fund for operating expenses and general obligation bonds for capital investments) is entirely appropriate.

The problem with a General Fund/general obligation bond financing scheme is the competition for these resources. Although the state budget picture has brightened in the last few months (that is, revenues are running well ahead of the estimates used in the budget), ongoing expenditures are still estimated to exceed ongoing revenues for the next few years. Unless the budget is brought into balance with structural changes, there will continue to be very strong competition for General Fund resources. Likewise, there is a significant demand for investments that can be funded from General Obligation Bonds.

Given this problem, we examined various other funding options to determine if they would be appropriate for all or some of the needed funding. As a result of input from various stakeholders and interested parties, we considered numerous ideas. Many of them would require users to pay a fee for some type of activity involving the ocean. We looked at such fee proposals from a few perspectives. First, was the fee appropriate from a user/beneficiary standpoint (i.e., is there a reasonably direct link between the payers of the fee and the benefits they receive or the costs they impose on the public)? Second, what were the costs of administration, enforcement, and collection? Finally, would the proposed fee impact other levels of government? In most cases, there was little data available to either estimate the costs or revenue from the proposals. In some cases, the amount of revenues would be dependent on decisions of the legislative body in establishing a fee level.

We also considered various other funding sources. For example, it is possible to provide an incentive for the private sector to match government-provided resources. Likewise, it may be possible to obtain some funding from the federal government since they have an interest in the health of the nation's coastlines.

Lastly, in thinking about funding options for the MLP AI it will be important to consider the timing and nature of the revenue stream associated with each option. Because some of the options identified will take time to develop, they are not appropriate for the short- (and potentially medium) term needs of the program. Thus, for example, revenues from platform decommissioning likely would take some time to develop and cannot, therefore, be used to support MLP AI activities in the short term. Similarly, some revenue streams may be “lumpy” in nature, that is, highly variable from one year to the next. This needs to be taken into consideration in designing a funding scheme for the MLP AI.

Recommendations

Based on our review of this issue, we believe that a funding mix that relies mostly on the General Fund and General Obligation Bonds in the early years is most likely to allow the program to move forward at a reasonable rate. Later, it may be possible to replace such funding with a mix of other revenues and fees as discussed later in this report.

We recommend that the Task Force:

1. Within the priorities of the California Resources Agency, seek General Fund support for initial operating expenses of the project through the 2006-07 Governor’s Budget.
2. Within an upcoming resources or infrastructure bond, seek an allocation to cover capital investments of the MLP AI.
3. Seek passage of a broadly-based, easily-collectable and enforceable fee for MLP AI activities that cannot be funded on a timely basis from the above sources. Although local governments and facility operators may have serious concerns, an occupancy tax on lodging along the coast is a reasonable candidate for consideration.
4. In conjunction with all of the above, seek federal and private sector support on a matching basis.
5. For long-term funding, convene a broadly based group of environmental stakeholders, the industry and appropriate scientists to explore the feasibility of the “Rigs to Reefs” concept as discussed later in this report.

State General Fund

The most significant source of state funding is the General Fund, making up about \$90 billion of the state's total 2005-06 budgeted expenditures of \$117 Billion. The balance consists of special (\$23 billion) and bond funds (\$4 billion). The most significant sources of revenue to the General Fund include: (1) the personal income tax at \$43 billion, the sales tax at \$27 billion and the corporate income tax at almost \$9 billion. At the time the budget was enacted (July 2005), General Fund revenues for 2005-06 total approximately \$84 billion with the balance of the difference between revenues and expenditures consisting of spending from carry-over balances. Since the enactment of the budget, revenues have run well ahead of budget estimates. Nevertheless, the most recent estimates from the Office of the Legislative Analyst indicate that estimated expenditures would continue to exceed estimated revenues for the next few years.

The state General Fund supports, to a large degree, our system of K-12 education (approximately \$34 billion in 2005-06). Other major draws on the General Fund include health and human services (\$25 billion), higher education (\$9 billion) and corrections (\$7 billion). The total General Fund allocation for the Resources Agency, the "home" of the Marine Life Protection Act Initiative (MLPAI), is just over \$1 billion, with most of that going to the fire protection function.

From a theoretical standpoint, the General Fund would be appropriate for all or part of the funding for an activity like the MLPAI. The activities of the program will benefit a large number of Californians, and the benefits are difficult to attribute or allocate entirely to specific users (who, in theory, could be assessed a fee reflecting the benefit or harm of the activity to the goals the MLPAI will achieve). The difficult part of relying on the General Fund for funding support for this activity is the competition that exists within the General Fund. First of all, there are insufficient revenues to support the current level of General Fund supported programs. Second, the MLPAI would be a "new" activity for the General Fund, thereby placing additional pressure on current programs or for a tax increase. Finally, the Resources Agency is not in a good position to allocate its (relatively small) share of the General Fund to the MLPAI due to other demands within the Agency (i.e., fire protection).

In conclusion, we believe that the General Fund is an entirely appropriate source for funding this program from a budget theory basis. Unfortunately, given the condition of the General Fund, we do not believe that it can be relied on for a significant share of the total funding of MLPAI activities. Nevertheless, it will be needed in the early years while other options are considered, and to support a portion of the MLPAI activities that cannot be appropriately or adequately funded from the other sources identified in this report.

General Obligation Bonds

As a general rule, general obligation bonds are an appropriate financing mechanism for capital expenditures that are otherwise appropriately funded from the state's General Fund. The theory of bond funding is that it allows the citizens that are going to benefit from the investment to pay for it (through the periodic payment of interest and capital). As such, bonds are an appropriate funding mechanism for state investments with a useful life of several years. Ongoing operating expenditures for governmental programs are not an appropriate use of the proceeds of bonds since such expenditures do not have a useful life beyond the period of expenditure. That is, if the public wants an ongoing benefit, the activity should be funded each year from current revenues.

Since March 2002, the Legislature has placed on the ballot, and the voters have approved, about \$6.7 billion in general obligation bonds to support various natural resources programs (Propositions 12, 40 and 50). These monies support a wide range of expenditures including, for example, clean drinking water projects and recreational facilities. It is likely that the Legislature will place additional resources bonds on future ballots. Based on recent voting patterns, the public is likely to approve such proposals.

Whether bond funding is an appropriate mechanism for funding Marine Life Protection Act Initiative (MLPAI) activities depends primarily on the nature of the benefits flowing from the expenditures. If, for example, the activity considered for bond funding has a long, useful life, then the use of bond funds is appropriate. In our judgment, activities that provide an ongoing scientific basis for future preservation or conservation actions may meet that test. On the other hand, activities that must be funded each year, such as personnel costs for enforcement of various fishing restrictions, do not meet that definition. Obviously, a degree of judgment is required in determining whether bonds are an appropriate funding source for a planned activity.

Given the demands on the General Fund and the investment characteristic of the MLPAI, bond funds may appropriately be used to finance some of the contemplated MLPAI investments.

Fees – An Overview

We recognize that the term “fee” is not precisely defined nor used to cover only one type of activity. For purposes of this paper, “fees” consist of monies paid to government for a governmental service, as a mitigation of the impact of an activity on public resources or for engaging in a governmentally regulated activity. An example of a fee paid for a governmental service is the fees paid by a homeowner for having her/his garbage picked up by a government entity. A mitigation fee could be a fee paid by motorists, as a part of their annual vehicle license renewal amount, to the local air pollution authority. A fee paid to a professional licensing board to maintain a license to practice a profession is an example of the third category mentioned above. In each of these cases, there is a “nexus” between the fee payer and the governmental activity for which the proceeds of the fee are spent. The stronger the nexus, the easier it is for policy makers to adopt the fee and the more likely the proposal will survive legal challenges.

Fees may be a very appropriate part of the funding mix for the Marine Life Protection Act Initiative (MLPAI). Some parties have suggested, for example, that the commercial and/or recreational fishing industries are an appropriate source for funding this program. Some have suggested that various other beneficiaries of a healthy ocean should pay some of the costs (scuba divers, for example). A broader based fee, such as proposed by Senator Simitian’s SB 956 (2005), may be appropriate. SB 956 would have assessed a \$1 per night fee on hotel room charges along the coast. Obviously, a fee such as that requires a significant effort to establish and administer but would again result in a group of beneficiaries paying part of the costs of MLPAI activities.

In evaluating the appropriateness of any fee proposal, the impact on the entity or individual assessed must be considered. Proposing a fee that would severely hamper an industry would be detrimental to California’s economy and that industry. As such, it would not provide the amount of revenues needed to carry out the MLPAI. In addition, the costs of collecting the fee must be considered. Obviously, a fee that costs a major share of projected revenues to collect makes little sense from a pure revenue generation standpoint (nevertheless, there may be equity or policy arguments for such a fee). Likewise, the ability to enforce or collect is critical. A fee that relies on self-reporting and is difficult to audit depends solely on the willingness of the participants to pay the fee.

Several concepts that would use fee revenue to fund all or part of the anticipated MLPAI activities are discussed later in this report.

Discussion of Selected Options

The balance of this report consists of brief discussions of various alternatives for funding the activities of the Marine Life Protection Act Initiative. We have organized the options into three groupings, based on the following criteria (and in alphabetical order within each group):

- A. Options that are conceptually attractive
- B. Options that are conceptually attractive but have significant drawbacks
- C. Options that have major drawbacks or are conceptually flawed

Organization of the options into these groupings is not hard and fast, and others may have different views regarding the attractiveness and feasibility of the alternatives based on their perspective and experience.

Federal Funds

Proposal: Use federal funds to support the activities of the Marine Life Protection Act Initiative (MLPAI)

Estimated Revenues: Unknown

Discussion and Comments: Some have suggested that federal funds could be used to support some of the activities of the MLPAI. Potentially, a number of different federal programs could be helpful.

Various federal programs relate to monitoring and protecting the marine environment. Some of these programs are administered by the United States National Oceanic and Atmospheric Administration's National Ocean Service (NOS) in the Department of Commerce.

The most prominent of these are the:

- National Marine Sanctuary Program
- National Estuarine Research Reserve Program
- National Estuary Program

Several locations along California's coast are designated sites for purposes of each of these programs, including four National Marine Sanctuary sites. Designation of these sites enables the state to take advantage of federally-funded marine research and monitoring efforts in these locations. While these programs provide relatively little in the way of direct support for MLPAI activities, there are likely to be a significant source of collaborative research opportunities between the state and the NOS.

In addition, the National Park Service operates several parks and recreation areas along the state's coast and thus represents another potential source of funding.

The Environmental Protection Agency has a number of major grant programs that provide funds to state and local governments to improve water quality and reduce non-point source pollution. These funds are unlikely to be a source of significant support for the activities of the MLPAI itself, but ultimately play an important role in helping to improve the health of the marine environment.

In addition, Congress has recently considered proposals to lift the ban on offshore oil and gas drilling. The House Budget Reconciliation Bill at one point contained such a provision, though it was recently deleted. As part of this effort, language was included to increase the amount of drilling royalties allocated to coastal states and local governments. These funds were intended to be used for the monitoring and management of wildlife and

fish, and their habitats, and to mitigate the impacts of energy and mineral extraction activities on wildlife, fish, air, water and other natural resources. Whether similar provisions will be included in the final congressional budget bill is uncertain at this point.

Finally, in the recently-enacted energy legislation, Congress established a Coastal Impact Assistance Program, which provides for the allocation of certain revenues from oil and gas drilling activities on a formula basis to “producing” states. These funds may be used for restoration of coastal areas and mitigation of damage to fish and wildlife. Allocation of the funds is limited, however, to states that have not imposed a moratorium on leasing of federal lands for these purposes.

Feasibility: There is only a limited potential for federal funds to support MLP AI activities directly, depending on the particular federal funding source, unless the state is able to persuade the federal government to play a greater role in supporting the activities of the MLP AI. Federal support is appropriate given the national importance of the health of the nation’s coastlines.

Ocean Resource Licensing Fees

Proposal: Negotiate payments in connection with the siting of facilities that use large quantities of water for industrial purposes, such as power plants, liquefied natural gas (LNG) import re-gasification terminals and desalinization plants.

Estimated Revenues: Unknown, potentially significant.

Discussion and Comments: Under this proposal, payments would be negotiated to support the Marine Life Protection Act Initiative (MLPAI) by facilities that use large quantities of water from the ocean for industrial purposes or have a significant presence in or near the marine environment.

One such type of facility is a power plant where the operators are seeking to license, relicense or site the facility, particularly on or near the coast. In addition, the siting of an LNG import re-gasification terminal or a desalinization plant may also present an opportunity to negotiate a revenue stream to support the MLPAI.

For example, payments could be negotiated in connection with the relicensing by the federal Nuclear Regulatory Commission (NRC) of the nuclear power plants currently operating in California. Because these plants intake and discharge significant quantities of water used in the operation of the plants into the ocean, there is a direct impact on the marine environment. Diablo Canyon Units 1 and 2, which are operated by Pacific Gas and Electric Company, are up for relicensing in 2024 and 2025, respectively. San Onofre Units 2 and 3, which are operated by Southern California Edison, are up for relicensing in 2022, and 2023, respectively (Unit 1 is no longer in operation). Because relicensing is over 15 years in the future, negotiation of a “mitigation payment” from these plants is potentially a long-term source of support for the MLPAI rather than a short-term resource. Also, the extent of the state’s leverage in this process is somewhat unclear given that the NRC has primary responsibility for the relicensing process, though it likely would be exercised as part of environmental review process.

The California Energy Commission has responsibility for siting approval of other power plants in the state. While it is relatively unlikely that a significant number of new power plants will be located on or near the coast, there are a number of existing power plants that may be rebuilt. This would provide an opportunity for the state to negotiate a stream of “mitigation payment” revenues to support the MLPAI. Depending on the number of plants rebuilt and the level of payments negotiated, this stream could generate up to several million dollars annually for MLPAI activities. However, if these plants adopt once-through cooling systems, as recommended by California Energy Commission staff, any such mitigation payment revenues may be substantially reduced due to decreased environmental impact associated with the plants’ operation.

LNG has historically made up a small portion of U.S. natural gas supplies. More recently, however, increasing demand, rising gas prices and the possibility of domestic shortages has caused the issue of LNG imports to resurface. However, significant opposition remains. Onshore LNG re-gasification terminals are viewed as large, obstructive and displeasing to the eye for local residents and businesses. More important, opponents argue that there are significant safety concerns associated with siting LNG re-gasification terminals.

The recently-enacted federal energy bill gives the Federal Energy Regulatory Commission (FERC) “exclusive” authority to approve an application for an LNG terminal. However, the bill also states that, except as specifically provided in the act, it does not affect the rights of states under the federal Coastal Zone Management Act, Clean Air Act, and Water Pollution Control Act. In addition, FERC is required to promulgate regulations requiring applicants to adhere to the National Environmental Policy Act and to consult with state and local officials during the siting process. Lastly, the energy legislation does not appear to preempt the requirement that the governor approve the siting of an offshore LNG terminal as part of the Coast Guard’s review process under the Deep Water Port Act.

Given the newness of this legislation and the question of what specific role states will have in the LNG siting process going forward, it is not entirely clear how an effort by the state to negotiate a revenue stream to support the MLPAI as part of an LNG siting decision would play out. It appears that the state may have greater leverage to negotiate a stream of “mitigation payments” in the case of an offshore LNG terminal. Again, depending on the number of terminals sited and the level of payments negotiated, this revenue stream could generate up to several million dollars annually.

Another possibility along these lines would be to negotiate mitigation fees on the siting of desalinization plants on the coast. Water supply agencies in a number of coastal counties have begun to consider desalinization plants as a way of providing water to their customers. Southern California Edison is giving consideration to building a plant at the site of the retired San Onofre Nuclear Unit 1. Evaluating the environmental effects of such plants will take considerable study. Partly for this reason, it is unlikely that any of these plants would be operational before 2010. Nevertheless, it is appropriate to incorporate in the process for development and siting of these plants negotiations over mitigation payments to support the MLPAI.

Feasibility: The prospects for revenues from mitigation payments to support the MLPAI as part of the power plant or LNG terminal siting process are moderately good, but subject to some uncertainty, particularly given recent legislative changes. In addition, given the lead times for the siting process, it is likely these efforts would yield revenues to support the MLPAI in the medium to long term rather than the short run.

Private Donation Match Requirement

Proposal: Tie certain public funding obligations related to the Marine Life Protection Act Initiative (MLPAI) to the achievement of a specified level of private funding commitments.

Estimated Revenues: Unknown, but variable.

Discussion and Comments: Under this proposal the expenditure of public funds for certain aspects of the MLPAI effort would be triggered upon the achievement of a certain level of private funding commitments. This approach presents an opportunity to leverage private funding from either philanthropic or commercial interests.

Foundations have historically contributed significant sums for environmental and conservation projects. However, they often do not see their role as one of providing continuing support for projects that, in their view, should be supported by public funds. Conditioning a portion of public spending for the MLPAI on a certain level of private funding provides assurance to these entities that public funds will be an important part of the support for the MLPAI. In addition, this approach provides an incentive, particularly for commercial interests, to contribute to the MLPAI effort if they see that their support will be matched as a result of triggering the public expenditure.

An example of this approach is the National Fish and Wildlife Foundation, a nonprofit, tax exempt organization that was established by Congress and regularly receives public funding that it then matches with private funds. The funding is used to protect, restore, and manage bird, fish and wildlife habitat as well as support environmental education and community outreach programs.

It is likely that the flow of revenues from this approach would be somewhat sporadic, or variable, in nature. This is because philanthropic and commercial donors are more likely to make donations on a one-time basis rather than for ongoing support of the program. As such, this approach may be suitable for funding only certain aspects of the MLPAI.

In addition, this approach is fairly labor-intensive and somewhat inefficient in that a significant portion of the MLPAI staff's time would need to be spent supporting a fundraising effort. This would need to be balanced against the importance of engaging private interests in supporting the MLPAI.

Feasibility: Unknown. There is certainly some potential for private support of the MLPAI, however, the extent of that support is unknown and would need to be determined.

Real Estate Transfer Taxes

Proposal: Real estate transfer tax.

Estimated Revenues: Depending on the rate imposed, could provide tens of millions of dollars per year.

Discussion and Comments: Currently, local governments collect taxes on the transfer of real property located within their jurisdictions. Typically, the County Recorder collects these amounts as a part of the transaction wherein the change of ownership of property is recorded. Under this concept, a relatively modest additional tax would be imposed on each transfer of real property within California for the purposes of funding the Marine Life Protection Act Initiative (MLPAI). Alternatively, such an additional tax could be imposed only on property located along the coast, subject to the definitional issues identified under “Transit Occupancy and Similar Taxes”.

The major advantage of this concept is that a relatively small amount of additional taxes per transaction would yield a significant amount of revenue (since there are a large number of transactions each year). In addition, there would be little additional administrative costs involved since a government agency currently collects the existing tax as part of an important (to the buyers and sellers of real property) transaction.

A major disadvantage of this revenue source is that local governments consider this revenue source as “theirs”, and may object to it becoming a state revenue source. In their view, if these fees are going to be increased they want to keep the increased revenue locally. In imposing this tax, policy makers would need to consider whether it would be imposed statewide or just on transactions along the coast (for example, within the coastal zone as defined in the Coastal Act, or within counties that actually are on the coast). If it was imposed statewide and on properties without a “nexus” to the ocean, it may be considered a General Fund revenue and therefore subject to all of the demands on that fund source.

Feasibility: Could raise a significant amount of monies with little administrative costs. Will be difficult to get policy makers to accept the MLPAI as the appropriate recipient of this revenue source.

Revenues from Platform Decommissioning

Proposal: Require payments from oil companies to support the Marine Life Protection Act Initiative (MLPAI) in consideration for permitting oil and gas drilling platforms to be turned into artificial reefs in lieu of removal when decommissioned.

Estimated Revenues: Unknown, potentially major revenues, at least partially offset by the state's maintenance, monitoring and liability costs.

Discussion and Comments: There are offshore 27 oil and gas platforms in California, 4 in state waters and 23 in federal waters. Water depths of the platforms range from 22 to 1198 feet. These facilities are expected to reach the end of their useful life in roughly 10 to 20 years, though this timing may be affected by oil and gas prices. The terms of the current state and federal leases require the platforms to be completely removed. However, in lieu of removal these structures could be used as artificial reefs, resulting in significant decommissioning savings to the current oil company owners of the platforms. Some have proposed that a portion of these savings could be paid to the state, which would assume liability for whatever portion of the structures that remained, thereby creating a source of revenue for ocean protection and management programs.

Legislation to create artificial reefs by using decommissioned oil and gas platforms was first introduced in California in 1998. Under the proposal only the tops of the platforms would be removed, and the state would assume ownership of the underwater scaffoldings as artificial reefs. Under the proposed legislation, the oil industry would in return pay the state approximately \$300 million to \$400 million to be used for protection and restoration of marine resources. In 2001, Senator Dede Albert reintroduced legislation (SB 1) that would have created a state "rigs to reefs" program. However, in the face of strong opposition from environmentalists and the bottom trawl fishing industry, the bill was vetoed by Governor Gray Davis.

Liability and Maintenance Costs

In exercising discretion to allow these platforms to be decommissioned without being completely removed, the federal Department of Interior's Minerals Management Service would likely require the state to assume liability for the structures, though this may be subject to negotiation. Environmentalists raise the concern that the funds collected from the oil companies could fall short if the state encounters major costs for pollution cleanup or fishing accidents at the underwater towers. In addition, under this type of arrangement the state would be liable for the cost of monitoring and maintaining artificial reefs for the life of the structures. In evaluating these costs, rigs-to-reefs programs established in Louisiana and Texas may provide some guidance, though because most of the platforms in the Gulf are in shallow water the experience may not be comparable.

Potential Savings

Estimates of the potential savings resulting from decommissioning by partial instead of complete removal are necessarily somewhat speculative given the lack of experience in decommissioning California's oil and gas platforms. Given the greater depth of many of the platforms off California's coast, decommissioning costs likely are much higher, potentially resulting in several hundred million to a half billion dollars or more in avoided costs to oil companies. Depending on the agreement that is struck with the state over what percent of these savings the state would receive, a "rigs-to-reefs" could result in substantial revenues to the state for marine monitoring and protection activities on the order of at least several hundred million dollars.

Other Considerations

Additional considerations that need to be factored into the decision of whether complete decommissioning is more appropriate include the availability of an onshore staging area, the availability of the heavy equipment necessary for complete decommissioning and the cost and air quality impacts of processing massive amounts of steel from the rigs.

On the other side is the question of whether the debris strewn on the ocean floor under these platforms, which opponents argue contains drilling muds that are likely contaminated with oil and grease, heavy metals, hydrocarbons and toxic chemicals should be cleaned up or are better left undisturbed.

Lastly, numerous federal and state agencies would need to be involved in the process of developing a "partial" decommissioning program.

Feasibility: Given the time involved in the regulatory and permitting process, the likely opposition of certain constituencies and the somewhat uncertain state of the science involved, an effort to generate revenues from decommissioned drilling rigs is likely to take a considerable amount of time to reach fruition. Thus, it appears that while a rigs-to-reefs program may ultimately generate substantial revenues to support marine protection activities, it is a longer-term prospect. In addition, revenues from this source are likely to be "lumpy" in nature. That is, the amount would likely vary significantly from one year to the next. One way of mitigating this lumpiness would be to use the funds to create an endowment with payouts to support the MLPAI in more even amounts annually.

Tidelands Oil and Gas Revenues

Proposal: Allocate a portion of the state's tidelands oil and gas revenues derived from drilling on state lands for support of the Marine Life Protection Act Initiative (MLPAI).

Estimated Revenues: Unknown, potentially millions of dollars.

Discussion and Comments: The state receives a portion of the revenue derived from oil, gas, and other minerals extracted from the state's tidelands. Tidelands are those lands and water areas along the coast of the Pacific Ocean seaward of the ordinary high tide line to a distance of three miles. The State now administers more than 100 sites on which oil companies have developed some 1,000 wells that take oil and gas from state lands. The amount of state revenue from tideland oil leases is based primarily on the net profit received by oil producers leasing state tidelands and fluctuates significantly as the level of production and prices for oil and gas change. Since the mid-1980s tidelands revenues have fluctuated from a high of \$236 million in 1991-92 to a low of just under \$16 million in 1998-99.

For many years since the state started receiving oil and gas lease payments in 1956, most of the revenue was allocated to specific accounts outside the General Fund. In the early 1980s, significant amounts of tidelands oil revenues were used for K-12 education, higher education and general state capital outlay purposes. Starting in 1986, when tidelands revenues declined significantly, allocations for K-12 and higher education capital outlay were discontinued. Allocations for general state capital outlay purposes were discontinued in 1995-96.

In 1997, legislation was enacted creating the Resources Trust Fund (RTF) into which tidelands revenues are allocated for the preservation and protection of California's natural and recreational resources. The RTF is funded from tidelands oil revenue remaining after specified payments are made to local governments and the State Lands Commission and an allocation is made to the California Housing Trust Fund. This law provided for allocations of tidelands revenues from the RTF for various purposes including salmon and steelhead trout restoration (\$8 million), marine life management (\$2 million) and state parks deferred maintenance (\$10 million).

After satisfying these allocations, any remaining tidelands revenues were to be allocated to the Natural Resources Infrastructure Fund (NRIF). Priorities for the use of funds from the NRIF include environmental review and monitoring by the Department of Fish and Game, land acquisition, Habitat Conservation Fund projects and non-point source pollution abatement programs at the State Water Resources Control Board and the California Coastal Commission.

However, because of the state's budget crisis, the 1997 statutory allocation has been suspended since 2001-02 and most of the revenues have been diverted to the General Fund. More recently, the statutory allocation scheme described above has sunsetted. Two other developments have also occurred. First, the amount of tidelands revenues has increased as a result of the increase in oil and gas prices. Second, the state recently committed to setting aside \$2 million of tidelands revenues per month, up to \$300 million, beginning in 2006 to meet the costs of well abandonment in connection with a lawsuit between the state and the city of Long Beach over the retention of funds by the city for those costs.

Although it is difficult to estimate future tidelands revenues given the volatility of oil and gas prices, it is unlikely that prices will drop back to the \$20 per barrel level of several years ago. Assuming that is the case and assuming only the existing lease arrangements, tidelands revenues are likely remain at or near the current level, at least for several years. This is partly due to the fact that there are only limited opportunities for the negotiation of additional royalties from existing leases.

Finally, there is the question of whether new leases can or will be entered into for drilling, yielding additional tidelands revenues. Existing state law prohibits the State Lands Commission from issuing new oil and gas leases except in very limited circumstances. Moreover, public and political sentiment against drilling makes it extremely unlikely that any new leasing will be undertaken. However, little public discussion has occurred so far regarding alternative extraction methods, such as slant drilling, that might permit drilling to be done from onshore sites, for example, which would reduce the risk of oil spills and eliminate the need for offshore drilling platforms.

In general, tidelands revenue is an attractive source for MPLAI. Given the impact of drilling operations on the marine environment, it is appropriate that a portion of these revenues be used to support the MLPAL. Moreover, even in the midst of the state's budget problems, the Legislature and the Governor made funding for ocean protection efforts from tidelands revenues a priority by allocating \$10 million in 2004 to support the California's Ocean Protection Council established by SB 1319.

Feasibility: Given the state's continuing structural budget gap, the state's General Fund likely will continue to receive most tidelands revenues. If the Legislature and the Governor are able to resolve the budget problem, tidelands revenues would be an appropriate source for at least a portion of needed MLPAL funding.

Transit Occupancy and Similar Taxes

Proposal: Fees on businesses, including lodging, in close proximity to the ocean.

Estimated Revenues: Potentially tens of millions per year offset by possibly modest administrative and enforcement costs.

Discussion and Comments: The underlying theory of these types of proposals is that commercial activities that benefit from a healthy ocean should pay a portion of the costs of insuring the ongoing well-being of the ocean, and therefore their businesses. Given the large amount of commercial economic activity near the ocean, a very modest level of fee per transaction/business could generate substantial revenues.

In 2005, Senator Simitian proposed SB 956 to assess a one-dollar per room night tax on hotels along the coast. A charge on other businesses also benefiting from a healthy ocean could be imposed at the same time such businesses pay their annual business license fees or could be collected along with the sales and use tax as a percentage of the transaction amount.

The advantage of fees of this type is that they could generate substantial revenues with modest administrative enforcement costs since they would be simply “add-ons” to existing collection mechanisms. The disadvantages are primarily (a) political, (b) definitional, and (c) the impact on the business environment. These fees would probably be “add-ons” to fees or taxes collected by other levels of government and/or for other purposes. Current beneficiaries of such revenues probably would be reluctant to share “their” revenue source with a new activity—no matter how worthy. In addition, it will be a challenge to delineate the areas within which the new fee would be imposed. The final concern would be to ensure that any such fees are broad based enough and at a low enough level to not negatively affect the underlying businesses.

Feasibility: Assuming that the issues identified above can be addressed—not a minor issue—revenues from this type of fee could be in the tens of millions per year.

Earmark Litigation Settlements or Proceeds from Abandoned Property

Proposal: Allocate a fixed percentage of any funds from a future regulatory judgment, settlement or other disposition awarded to the State for the support of the Marine Life Protection Act Initiative (MLPAI). Alternatively, allocate a percentage of abandoned property funds that escheat to the State for support of the MLPAI.

Estimated Revenues: Unknown, potentially major.

Discussion and Comments: Under this proposal, a fixed percent of any funds from a future regulatory judgment, settlement or other disposition awarded to the State would be allocated for the support of the MLPAI. In addition, the same percent of existing settlements that are not obligated to a particular purpose or are modified by a court could be allocated to the MLPAI. Currently, these funds generally flow into the state's General Fund, so this proposal simply involves diverting a portion of the funds to support the MLPAI.

One legal question that needs to be resolved in considering this proposal is whether the courts would likely impose limitations on the use of funds awarded to the state for a particular judgment for the MLPAI. Judgments awarded to the state without restriction are generally deposited in the General Fund. A portion of these funds could be earmarked for MLPAI. Judgments awarded to the state to be used for a particular purpose could potentially be unavailable for use for the MLPAI.

If there were significant opposition to allocating a portion of judgments or settlements unrelated to environmental issues to the MLPAI, the proposal could be limited to resources-related settlements and judgments. Obviously, this would significantly reduce the revenues that would flow to the MLPAI effort under this approach.

While the amount of judgments and settlements the state receives each year is unknown (but ultimately ascertainable), one particular aspect of this proposal deserves mention. It is likely that the amount of judgments and settlements received by the state varies considerably from one year to the next depending on the timing of these events. Thus, if the MLPAI were receiving a percentage of these funds, there could be significant annual variability in the flow of revenues.

Another potential consequence of this proposal might be some effort on the part of parties negotiating settlements to attempt to structure them in such a way as to avoid the allocation of a portion of the funds to the MLPAI, though this is unlikely if the percentage allocation is kept small.

An alternative but similar approach would be to allocate the same fixed percentage of abandoned property funds that escheat to the State for support of the MLPAI. Property escheats to the state from inactive bank accounts and other similar accounts when there has been no customer activity on the account for more than three years. The State Controller attempts to locate the owner of the account, who may make a claim for return of these funds. At the end of each month most of the balance of the funds in the Abandoned Property Account are transferred to the state General Fund. Even though claimants have the right to claim the return of this property indefinitely, because many do not, the General Fund receives nearly \$300 million in revenues each year from these funds and the interest on them.

Earmarking a percentage of settlements or abandoned property revenues to support the MLPAI would simply reduce the flow of these revenues into the General Fund, effectively making this transaction an appropriation of General Fund support for the MLPAI. However, if these funds were earmarked in statute, this would reduce the uncertainty associated with an annual budget appropriation.

Feasibility: Moderate likelihood of success. Because this proposal is essentially a continuous appropriation from the General Fund, opposition could be expected from those who oppose such earmarking of funds.

Environmental License Plate Fund

Proposal: Use a portion of the revenues that flow to the California Environmental License Plate Fund (ELPF) from the sale of personalized license plates.

Estimated Revenues: Potentially up to a few million dollars per year.

Discussion and Comments: The Environmental License Plate Fund receives revenues from car owners who pay for a personalized license plate for their vehicle. The fee for the original plate is \$41; renewal costs \$30. These fees generate approximately \$35 million annually. Revenues have been growing at a moderate pace.

Under current law these revenues are required to be spent on various environmental programs including, among others, acquisition, preservation and restoration of natural areas or ecological reserves and protection, enhancement and restoration of fish and wildlife habitat and related water quality.

For the 2005-06 Budget, nearly 87 percent of these revenues will be spent by seven departments or programs: Fish and Game, Parks and Recreation, Secretary for Resources, the Tahoe Regional Planning Agency and the Coastal, Tahoe and Sierra Conservancies. Of these, Fish and Game receives by far the largest share -- \$15.8 million. The balance of the funds are spent in small amounts by numerous other state departments, including other state conservancies.

Feasibility: Because these funds provide significant support for several departments and programs, it is unlikely that more than a modest amount could be designated for ongoing support for the Marine Life Protection Act Initiative.

Fees on Recreational Users

Proposal: Assess fees on recreational users.

Estimated Revenues: Probably in the low millions per year possibly offset to a significant degree by administrative and enforcement costs.

Discussion and Comments: Numerous parties have suggested a variety of fees be imposed on recreational users of the ocean such as scuba divers, kayakers, boaters and other users who engage in activities that take advantage of the ocean. For example, a fee could be imposed on the re-filling of scuba tanks, with the monies collected by the retailer and remitted to the state. This concept would be similar to the fee collected by auto smog testing stations and remitted to the state to cover the cost of regulatory oversight.

Such fees can be defined appropriately as user fees since the beneficiaries of the Marine Life Protection Act Initiative (MLPAI) activities would be paying for a portion of the effort. The most significant problem with these types of fees relate to the administration and enforcement of the fee mechanism. Based on what little information that is available relating to the number of persons who engage in these types of activities, it would appear that any mechanism to administer and enforce a fee would consume a substantial part (or all) of the amount collected. There simply is not a good mechanism to collect fees in small increments and to insure that participants in such activities have paid the fee.

Feasibility: To the extent that a specific fee could be administered and collected at a low enough cost that the net “yield” would be meaningful, such a fee could be considered as a part of the funding mix for the MLPAI.

Impact Fees on Development

Proposal: Charge impact fees for development upstream from coastal habitats to support Marine Life Protection Act Initiative (MLPAI) activities.

Estimated Revenues: Unknown, potentially significant.

Discussion and Comments: Under this proposal, the state or local government would charge a mitigation payment, or impact fee, for development that occurs upstream from the ocean. In addition, a number of related land development tools could be used to reduce the impact of development on the marine environment, including the transfer of development rights and mitigation banking (land trusts).

Many local communities currently charge impact fees of developers to cover various capital needs that result from development such as water and sewer infrastructure.

Collection of these fees would be relatively easy because such fees are already charged to development.

It is likely that a number of objections would be raised to the imposition of these fees, however. Local governments would be concerned about the state using a fee that has generally been considered a local revenue source. In addition, concerns would likely be raised regarding the effect of such fees on the cost of housing, particularly low-income housing.

Another issue that would have to be dealt with is the question of defining “upstream development” for purposes of this fee. Would the fee be imposed only on development that clearly exists within a watershed that flows to the ocean? Only in coastal communities?

Finally, concerns might be raised that such a fee would duplicate the waste-discharge permitting process discussed elsewhere in this report.

Possible alternatives to the imposition of impact fees would be to establish programs for the transfer of development rights away from environmentally sensitive areas or mitigation banking where developers set aside sensitive land in exchange for development rights elsewhere. These tools are in use in a variety of communities already. However, they would be less useful for the purpose of actually raising revenue to support the activities of the MLPAI, unless developers could be persuaded to make mitigation payments to support the MLPAI in exchange for development rights. It is unclear what the potential for such payments is, but the concept should be explored.

Feasibility: If the issues raised above can be addressed, the imposition of an impact fee on “upstream” development could be an attractive source of funding for the MLPAL. However, it is likely to face significant opposition.

Increase Recreational Fishing Fees

Proposal: Impose fees on recreational fishing.

Estimated Revenues: Depends on policy decisions. Sport fishing licenses are estimated to raise almost \$50 million in 2005. However, such revenues have been relatively static for a long period of time. In addition, the number of licenses issued has actually declined over time despite the growth in the state's population.

Discussion and Comments: The Department of Fish and Game estimates that nearly 1.7 million sport fishing licenses and over 800,000 sport fishing stamps will be issued in calendar year 2005. Revenue from these transactions will total almost \$50 million.

Under current law, holders of sport and commercial fishing licensees must purchase an ocean enhancement stamp if they plan to fish south of Point Arguello. Proceeds from the stamp are used for specified types of research. The Department estimates that holders of sport fishing licenses will purchase about 250,000 stamps in 2005, generating almost \$900,000 this year.

While the recreational fishing industry would benefit from a well-managed ocean, timing of the cost verses the benefits is a significant issue. Is it appropriate for today's recreational fishing participants to bear the costs of a program that is unlikely to improve their sport for many years? Even assuming that policy makers decide that they do want to use this revenue source (despite the timing concern), the amount of revenue generated can not be calculated because the number of participants fishing in the ocean north of Point Arguello is not known, nor can one assume what rate the policy makers would be willing to impose on such fishing participants.

On the other hand, a significant advantage of using this source of revenue for the Marine Life Protection Act Initiative (MLPAI) is that it would impose few enforcement and administrative costs on the system since existing mechanisms are in place.

Feasibility: Depending on how the policy makers resolve the timing concern and the level of the fee increase, requiring recreational fishing participants to help fund MLPAI activities is feasible and could provide an unknown amount of revenue. In addition, the Department of Fish and Game may need any such revenue increases to enforce existing fishing laws, especially since overall license revenues have fallen well behind the growth in the cost of living over the last 10 years.

Oil and Gas Drilling on Federal Lands

Proposal: Use revenues derived from oil and gas drilling on federal lands to support the Marine Life Protection Act Initiative (MLPAI).

Estimated Revenues: Unknown.

Discussion and Comments: Under this proposal, payments would be made to support the MPLI by those entities leasing federal offshore lands for the purpose of drilling for oil and gas. (Note: the issue of revenues from leasing on state lands is discussed in the paper on Tidelands Oil and Gas Revenues.)

Under federal law royalties derived from oil and gas leases flow to the federal government. States receive a small percentage of these funds -- on the order of five percent. Thus, even if the current moratorium on drilling is lifted, the increase in revenues to the state would be modest unless Congress also allocates a larger share of royalty payments to states.

The federal Mineral Management Service (MMS) in the Department of the Interior has not conducted a lease sale off the coast of California since 1984. In 1990, then-President Bush imposed a leasing moratorium offshore of California, among other areas, in response to findings by the National Research Council that environmental information was inadequate to properly inform leasing offshore Florida and California. This moratorium was extended through mid 2012 by then-President Clinton.

Recently, Congress has considered proposals to lift the ban on offshore oil and gas drilling. The House Budget Reconciliation Bill at one point contained such a provision, though it was recently dropped. In addition, this language would have increased the amount of drilling royalties allocated to coastal states and local governments. Whether similar provisions will be included in the final congressional budget bill is uncertain at this point. It is possible that over time alternative extraction methods, such as slant drilling, that might permit drilling to be done from onshore sites, could have an impact on the political dynamic around this issue. (One project, currently in the conceptual stage, would involve onshore drilling on the federal lands at Vandenberg Air Force Base, but would also include slant drilling into the state tidelands. Presumably, this would yield both federal and state royalty revenues.)

Also, in the recently-enacted energy legislation, Congress established a Coastal Impact Assistance Program, which provides for the allocation of certain revenues from oil and gas drilling activities on a formula basis to “producing” states. These funds may be used for restoration of coastal areas and mitigation of damage to fish and wildlife. Allocation

of the funds is limited, however, to states that have not imposed a moratorium on leasing of federal lands for these purposes.

With respect to existing leases in federal waters, the state generally plays a role only if the leases are suspended thereby extending the term of the lease. Under existing law, after the initial term of a lease lapses, the lease continues in effect so long as oil and gas are produced in paying quantities or drilling operations are underway. In order to avoid losing the right to produce oil or gas where production is not occurring at the end of the lease term, a lessee may request a suspension, which has the effect of extending the term of the lease. The federal appellate court determined in 2002 that a lease suspension is subject to review by the California Coastal Commission for consistency with the Coastal Zone Management Act (CZMA). However, it does not appear that this review process gives the state the ability to negotiate mitigation payments from lessees.

Feasibility: Given the uncertainty with respect to whether any new leasing activity will be permitted and the inability of the state to affect the flow of royalties, revenues from oil and gas drilling in federal waters does not appear to be a good source of support for the MLPAL.

State Marine Parks

Proposal: User fees in newly created state marine parks.

Estimated Revenues: Unknown.

Discussion and Comments: Under this concept, the state would create marine parks and charge user fees for those entering these areas. Such a concept would be very consistent with the “user pays” theory of imposing fees since the users would be the beneficiaries of the related government activity.

There are several issues with this concept. First, how would the timing work? Since funding is needed to undertake the initial Marine Life Protection Act Initiative (MLPAI) activities, how would the state marine parks be identified before the initial work is funded? Second, how would any process to create such parks be reconciled with the existing processes of the Department of Parks and Recreation (DPR) and the Fish and Game Commission? Would DPR feel entitled to any such revenues for the state parks program? Third, how would the fees be collected and non-payers detected? The boundaries of marine parks would be difficult to delineate in a way that non-fee payers could be detected and held accountable for accessing the park without paying the appropriate fee. In addition, even if the boundaries could be clearly delineated, how would they be enforced? A fee mechanism without an enforcement mechanism is likely to be not very productive.

Nevertheless, assuming that the enforcement/collection issues could be addressed, this mechanism could provide some ongoing funding once the initial efforts to identify such parks are completed. However, there would be competition for any such revenues.

Feasibility: Substantial issues would need to be addressed, but could provide some funding to sustain the MLPAI.

Surcharge on Vehicle Registrations

Proposal: Impose a surcharge on vehicle registrations either statewide or within the coastal counties.

Estimated Revenues: Depending on how the surcharge was structured, about \$30 million per one dollar of fee proposed statewide and about \$20 million if imposed in coastal counties only.

Discussion and Comments: Under current law, the Department of Motor Vehicles may collect specified fees, typically at the request of the counties, along with the state imposed vehicle registration fees. Such fees may be imposed for various purposes, including air quality improvements, emergency response on the freeways and vehicle theft prosecution.

A similar surcharge could be imposed for purposes of funding the Marine Life Protection Act Initiative (MLPAI). If this revenue source were selected, numerous policy issues would need to be resolved. For example, what level of fee would be imposed? Would the fee be imposed by the counties at their discretion? Would counties share in the proceeds?

An important issue that would need to be overcome is that there have been and will be other demands on this potential revenue source. Senator Kuehl's Senate Bill 658 of 2005 would have authorized the coastal counties to impose a \$6 fee for various environmental mitigation purposes. (The Governor vetoed this measure).

The major advantages of a vehicle license surcharge is the relatively high level of revenue produced by a modest surcharge and the very minor administrative and enforcement costs.

Feasibility: Probably difficult to achieve due to the other demands on this fund source.

Volunteers

Proposal: Use teams of volunteers to support the efforts of the Marine Life Protection Act Initiative (MLPAI).

Estimated Revenues: Minimal revenue, but some potential for support of MLPAI activities.

Discussion and Comments: One suggestion for supporting the MLPAI is to use teams of volunteers to assist with MLPAI activities. Volunteers are currently used successfully by the National Park Service and other federal land agencies doing a broad range of tasks, from clerical and janitorial, to public reception and restoration. Volunteers also have played an important role in helping to clean up parkways and sections of highway. These activities often take the form of “clean-up days” where volunteers assist in clean up efforts for a day or a weekend. Another approach is for companies or nonprofit groups to “adopt” a park or a section of highway and periodically engage in clean up efforts.

Because the activities of the MLPAI are directed toward the marine environment, there would be fewer “clean up” opportunities of the sort that typically involve volunteers. However, teams of volunteers could be engaged to help with enforcement activity in marine protection areas (for example, watching for poachers) and educate the public about the marine life protection process. This approach is likely to work better in areas where there is sufficient local population density to warrant the effort and where local populations can be engaged to support the marine protection process.

Whether there are other activities for which volunteers would be suited depends on what specific activities will be undertaken as part of the MLPAI. Because volunteers would be less likely to be used in the open ocean, the range of activities for which they would be useful is limited. To the extent that volunteers can actually be used, however, this might help to reduce the cost of these activities, but probably only slightly. In addition, there would be some costs associated with managing volunteers.

While volunteers are required to sign a waiver in order to participate this may not eliminate entirely the issue of potential state liability for accidents or injuries that occur to volunteers engaged in these activities.

Feasibility: Moderate potential for volunteer involvement in MLPAI activities, but little in the way of actual revenue.

Waste Discharge Fees

Proposal: Establish fees on discharges into sewers and storm drainage systems.

Estimated Revenues: Unknown, potentially significant.

Discussion and Comments: Under this proposal fees would be imposed on public or private entities for the discharge of wastes into sewer systems or storm water drainage systems.

Currently, the State Water Resources Control Board (SWRCB), through the Regional Water Resources Control Boards, impose a variety of waste discharge fees for the privilege of discharging wastes that may affect California's surface and ground water.

Some of these fees are imposed pursuant to the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES), which provides that the discharge of pollutants into waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. Pursuant to the requirements of the Clean Water Act, the SWRCB has established a permitting process that includes the imposition of fees for two types of activities:

- Public entities subject to a storm water permitting requirement pay fees based on the population of the public entity that range from \$1,250 to \$25,000 per year. In addition, storm water discharges associated with industrial and construction activities are subject to annual fees.
- The balance of activities involving discharges that fall within the purview of the NPDES pay fees based on the permitted flow or design flow specified in each waste discharge permit. Flows in excess of 100 million gallons per day (mgd) pay \$100,000 per year. For flows less than 100 mgd, the fee is based on the amount of the flow up to a maximum annual fee of \$35,000, plus a surcharge related to the threat the flow represents to water quality. The maximum annual fee for NPDES-permitted public wastewater treatment facilities is \$50,000.

In addition, the SWRCB imposes fees on facilities that do not fall directly under the NPDES permitting system. These include:

- Wastewater treatment plants not included above, erosion control projects, and septic tank systems. Fees for these facilities are based on the threat that the facility's discharge represents to water quality and a complexity rating and range from \$800 to \$41,800 per year.

- Active and closed landfills and other land discharges. Again, the fees for these facilities are based on the threat to water quality and a complexity rating and range from \$1,500 to \$26,000 per year.

Lastly, fees are imposed on various specialized activities, for example dairies and feedlots.

These fees generate approximately \$55 million per year and support the SWRCB and the nine regional boards' water quality program.

In thinking about the potential for additional fees on some or all of these facilities or activities to support the Marine Life Protection Act Initiative (MLPAI), the most important question is whether some of the MLPAI activities will be related to remediating the effects of waste discharges on the marine environment. This would ensure that the additional charges constitute a fee and not a tax under the guidelines set forth in the state Supreme Court's *Sinclair Paint* decision. Clearly, waste discharges adversely affect the marine environment, though exactly to what effect is not yet well understood. But, assuming that at least some portion of the MLPAI activities will be directed at mitigating these impacts, fees on waste discharges appear to be an appropriate mechanism to generate revenues to support the MLPAI. Moreover, a fee representing a modest percentage of the current SWRCB fees would generate significant amounts of revenue.

Feasibility: Depending on the type of activities undertaken as part of the MLPAI, waste discharge fees appear to be an appropriate source of support, though it is likely that this proposal would generate significant opposition from those upon which the fees would be imposed, including public entities.

Aquaculture Activities

Proposal: Revenue sharing from increased aquaculture activities.

Estimated Revenues: Unknown

Discussion and Comments: Under this proposal, the state would permit private developers to do more aquaculture along the coast in exchange for a potential share of the profits. In turn, such payments could be used to fund Marine Life Protection Act Initiative (MLPAI) activities.

There are three obvious concerns with these types of proposals. First, the Department of Fish and Game (DFG) already regulates these types of activities. Second, such projects often need a substantial investment over time before they begin to produce significant revenues. Finally, since the DFG regulates these types of activities, it may need any additional revenues to offset the costs of the regulatory process. Therefore, it is not known how much revenue could ultimately become available for MLPAI activities, nor the timing of the availability of the monies.

Feasibility: This concept probably is not feasible as a revenue source for the MLPAI given the existing timeframes of anticipated MLPAI activities.

Restructure Commercial Fishing Activities

Proposal: Restructure the commercial fishing industry to make the industry more productive thereby able to pay significantly higher fees.

Estimated Revenues: Unknown, but potentially significant.

Discussion and Comments: During 2005, the Department of Fish and Game estimates that the commercial fishing industry will pay approximately \$3 million for about 17,000 licenses and permits. Given the relatively small size of that industry and the fact that the industry is only marginally financially viable, it is not reasonable to expect those engaged in commercial fishing activities to pay significantly higher fees that could be used to fund the Marine Life Protection Act Initiative (MLPAI).

It has been suggested, however, that the industry could be restructured, possibly after a significant investment, to make it more profitable. Such a restructuring would allow the industry to return some of their higher earnings back to the state. While the concept is somewhat undefined, some have suggested that restrictions on the times and areas when and where fishing would be allowed, coupled with restrictions on access to such areas (in effect, the allocation of licenses to engage in commercial fishing) could significantly improve the economics of the industry. Or, investments in value-added seafood products could assist the industry. If governmental involvement through a licensing mechanism or an investment program enhanced the financial standing of the industry, then it would be appropriate for the industry to pay higher fees. Such revenues possibly could be used to fund ongoing MLPAI activities.

As a general rule, “win-wins” like this are either already implemented, difficult or time-consuming to accomplish. Given the diversity of the economic outcomes of this industry (i.e., the varying profitability of different types of fishing activities and locales), it would be difficult to design a “one size fits all” proposal to accomplish the twin goals of enhancing marine life while increasing the profitability of the industry. That does not mean that this concept is not feasible. It does mean, however, that the higher fees from such a restructuring are unlikely to provide an initial funding source for the MLPAI. Such fees may, however, provide a long-term mechanism for sustaining the effort—possibly only after a significant up front investment. Another issue is that there would be competition for such revenues since the Department of Fish and Game may need the increased revenues to regulate the industry as restructured.

Feasibility: Possible, as a long term funding mechanism. This concept is unlikely to provide any meaningful level of revenues for MLPAI implementation in the near future.

Sponsorship/Naming Rights

Proposal: Generate revenue for the Marine Life Protection Act Initiative (MLPAI) by selling sponsorship opportunities to individuals, groups or corporations.

Estimated Revenues: Unknown, likely in the low millions of dollars per year or less depending the extent of signage permitted.

Discussion and Comments: Under this proposal, funds would be raised for the MLPAI by selling sponsorship opportunities to individuals, groups or corporations. The concept of selling naming rights is well established in the world of sports where numerous sporting venues have been named for a corporate sponsor in exchange for a contractual obligation to provide a certain amount of revenues over a specified period (e.g., “Monster Park”). In return, the sponsor gets a mention of the sponsor’s name in all media coverage of the venue’s events and, more frequently, concession rights as well.

Because the marine environment is significantly different from sporting venues – few “events” with significant media exposure occur – the attractiveness of corporate sponsorships may be limited. This could be mitigated by granting sponsors signage opportunities (in effect, advertising). The quantity and location of signage would be a significant determinate of sponsors’ willingness to pay. At the same time, the sale of naming rights for public assets other than sporting venues has generated significant controversy. While it might be possible to reduce the degree of opposition generated by using creative or “tasteful” signage, opposition is still likely to be substantial.

An alternative approach would be to have companies, groups or individuals “adopt” a beach or near-shore state park, for example. Historically, most of these sorts of arrangements are geared toward encouraging volunteer activity to help keep parks clean, for instance. It is unlikely that such arrangements would generate a significant, reliable stream of revenues to support the MLPAI.

The use of volunteers to support the MPLI effort generally is discussed in another part of this report.

Feasibility: Because the controversy generated by selling naming rights for beaches, near-shore parks, etc., is likely to be substantial, it seems unlikely that this approach would yield significant long-term revenues.

Tax on Plastics and Other Marine Debris

Proposal: Impose a tax on all polystyrene and other plastic materials distributed in seaside communities. Tax could be extended to other marine debris such as cigarettes, etc.

Estimated Revenues: Unknown, potentially significant depending on how the tax is structured.

Discussion and Comments: Generally, marine debris come from two primary sources: ocean sources such as trash from ships and recreational boaters and fishermen and, second, from the land. Debris from the land comes from stormwater runoff, landfills, solid waste, and rivers and streams. Land-based litter constitutes a significant portion of the marine debris found on beaches and in the ocean and, of this, a significant portion comes from plastics of various kinds, cups and cigarette butts.

In addition to creating an enormous litter problem, debris also presents a significant hazard for marine animals in that they easily mistake the debris for food. Also, as the debris breaks down it makes up a significant part of the ocean environment. For example, the mass of plastic fragments in the ocean off of Long Beach dwarfs the size of plankton cloud off in the same area, according to a recent study.

If a tax were imposed on these items a number of issues would need to be addressed:

The imposition of the tax – whether at the retail or wholesale level – would need to be determined. Imposition at the retail level results in significant collection costs, but may help to discourage litter. An example of this approach was contained in AB 586, which was considered by the California Legislature during its 2003-04 Session. This bill would have imposed a \$.02 fee at the point of retail sale on all disposable cups and bags, whether paper or plastic, unless they contained 40 percent or more of postconsumer recycled content. The bill died in committee.

Alternatively, imposition of the tax at the wholesale level would be more efficient, but would be targeted less directly at products based on their contribution to the problem of marine debris.

The items to be taxed would need to be defined. There are numerous different types of plastic materials that contribute to marine debris. Depending again on whether the tax was imposed at the wholesale or retail level, the definition of what would be taxed might differ significantly.

In addition, such a tax would be more workable if it were imposed on a statewide basis rather only in seaside communities, particularly if imposed at the wholesale level. By the

same token, imposition statewide likely would increase political opposition, since there would be less support for a tax to help the marine environment in non-coastal communities.

Imposition of a fee, rather than a tax would reduce the vote threshold for approval by the Legislature, but would limit the purposes for which the proceeds of the fee could be used because the state Supreme Court has determined that there must be a nexus between the imposition of the fee and the remediation purposes for which the fee revenues are used.

Finally, given the magnitude of the problem of litter and other marine debris, it may be more appropriate to devote whatever revenues are generated from the imposition of a fee or a tax on these items directly to dealing with the cleanup of the items themselves rather than to support the Marine Life Protection Act Initiative.

Feasibility: A tax or fee on plastics and other sources of marine debris could generate a potentially significant amount of revenue, depending on how it was designed, but numerous implementation issues would need to be addressed. In addition, it may be more appropriate to use the revenues generated from a fee or tax on marine debris to deal with directly with the debris. Finally, the proposal would face substantial industry opposition.